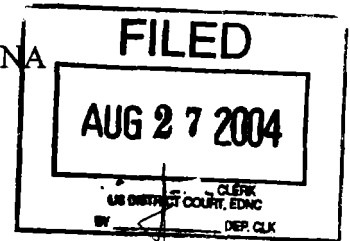


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:03-CV-595-BR3



CAROLYN P. KEEN, Administratrix of the
Estate of Gene Ted Keen,

Plaintiff,

v.

DOUBLE DOWN TRANSPORTATION, LLC
and JEFFERY SCOTT KOCH,

Defendants.

)
)
)
)
) MOTION TO EXCLUDE
) THE TESTIMONY OF
) ERNIE MALLARD AND
) GARY R. ALBRECHT

NOW COME the defendants Jeffery Koch and Double Down Transportation, and move pursuant to Rule 16(f), Rule 26, and Rule 37 of the Federal Rules of Civil Procedure, for entry of an order by the Court barring any trial testimony by the plaintiff's two purported expert witness, Ernie Mallard and Gary R. Albrecht, because of the plaintiff's failure to comply with the requirements of Rule 26 and the Scheduling Order previously entered in this case.

Plaintiff did not provide the defendants' counsel with copies of expert witness reports by either of these individuals, as she was required to do by Rule 26 and the Scheduling Order entered on the 23rd day of September, 2003, by Magistrate Judge William A. Webb.

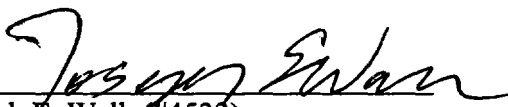
The Court has broad and inherent powers to enforce its orders, and the Court should exercise those powers in this case by excluding Mr. Mallard and Mr. Albrecht from testifying at the trial of this case.

A Memorandum in support of this motion is submitted herewith which sets out in detail the basis for this motion.

WHEREFORE, Defendants Jeffery Koch and Double Down Transportation move for entry of an order barring Mr. Mallard and Mr. Albrecht from testifying at the trial of this civil action.

Respectfully submitted this 27th day of August, 2004.

JORDAN PRICE WALL GRAY JONES & CARLTON

By: 
Joseph E. Wall (#4533)
P.O. Box 10669
Raleigh, NC 27605
(919) 828-2501
Counsel for Defendants

Certificate of Service

This is to certify that the undersigned has this date served the above Motion on counsel of record, postage paid, First Class, in the United States Mail addressed as follows:

W. Earl Taylor, Jr., Esq.
Attorney at Law
605 West Nash Street
Wilson, NC 27893

This the 27th day of August, 2004.


Joseph E. Wall